

## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 100

RIN 1018-AD68

**Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority**

**AGENCY:** Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the scope and applicability of the Federal Subsistence Management Program in Alaska to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. The amendments being proposed also would extend the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act or the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation, as required by the Alaska National Interest Lands Conservation Act (ANILCA). In addition, the amendments being proposed would clearly specify that the Secretaries are retaining the authority to determine when hunting, fishing or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority and to take action to restrict or eliminate the interference. The Departments also are proposing to provide the Federal Subsistence Board with authority to investigate and make recommendations to the Secretaries regarding the possible existence of additional Federal reservations, Federal reserved water rights or other Federal interests, including those which attach to lands in which the United States has less than fee ownership. The regulatory amendments being proposed would conform the Federal subsistence management regulations to the court

decree issued in *State of Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995). The proposed rule includes updated Customary and Traditional Use Determinations and annual seasons and harvest limits for fisheries. This proposed rulemaking also responds to the Petitions for Rulemaking submitted by the Northwest Arctic Regional Council et al. on April 12, 1994, and the Mentasta Village Council, et al. on July 15, 1993.

**DATES:** Written public comments on this proposed rule must be received no later than April 20, 1998.

**ADDRESSES:** Comments should be sent to Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503. See Supplementary Information section for electronic filing address.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management; telephone (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628, telephone (907) 586-7921.

**SUPPLEMENTARY INFORMATION:** The Federal Subsistence Board will hold public meetings to receive comments on this proposed rule at various locations in Alaska. Notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may need to be changed based on weather or local circumstances.

Comments may also be submitted by sending electronic mail to: ASM@mail.fws.gov.

**Background**

The Federal Subsistence Board assumed subsistence management responsibility for public lands in Alaska in 1990, after the Alaska Supreme Court ruled in *McDowell v. State of Alaska*, 785 P.2d 1 (Alaska, 1989), *reh'g denied* (Alaska 1990), that the rural preference contained in the State's subsistence statute violated the Alaska Constitution. This ruling put the State's subsistence program out of compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and resulted in the Secretaries assuming subsistence management on the public lands in Alaska. The "Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule" was published in the **Federal Register** (55 FR 27114-27170)

on June 29, 1990. The "Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register** (57 FR 22940-22964) on May 29, 1992.

In both cases, the rule "generally excludes navigable waters" from Federal subsistence management. 55 FR 27114, 27115 (1990); 57 FR 22940, 22942 (1992). In a lawsuit consolidated with *Alaska v. Babbitt*, plaintiff Katie John challenged these rules, arguing that navigable waters are properly included within the definition of "public lands" set out in ANILCA. At oral argument before the United States District Court for Alaska, the United States took the position that Federal reserved water rights which encompass the subsistence purpose are public lands for purposes of ANILCA. The United States Court of Appeals for the Ninth Circuit subsequently held: "[T]he definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Alaska v. Babbitt*, 72 F.3d at 703-704. In the course of its decision, the Ninth Circuit also directed: "[T]he federal agencies that administer the subsistence priority are responsible for identifying those waters." *Id.* at 704.

The amendments being proposed would conform the Federal subsistence management regulations to the Ninth Circuit's ruling in *Alaska v. Babbitt*. As the Ninth Circuit directed, this document identifies Federal land units in which reserved water rights exist. These are "public lands" under the Ninth Circuit's decision in *Alaska v. Babbitt* and thus are subject to the Federal subsistence priority in Title VIII of ANILCA. The amendments being proposed here also provide the Federal Subsistence Board with clear authority to administer the subsistence priority in these waters.

On July 15, 1993, the Mentasta Village Council, Native Village of Quinhagak, Native Village of Goodnews Bay, Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP, Katie John, Doris Charles, Louie Smith and Annie Cleveland filed a "Petition for Rulemaking by the Secretaries of Interior and Agriculture that Navigable Waters and Federal Reserved Waters are 'Public Lands' Subject to Title VIII of ANILCA's Subsistence Priority." On April 12, 1994, the Northwest Arctic Regional Council, Stevens Village Council, Kawerak, Inc., Copper River Native Assoc., Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP and Dinyee Corporation filed a "Petition for Rule-Making by the Secretaries of Interior and Agriculture

that Selected But Not Conveyed Lands Are To Be Treated as Public Lands for the Purposes of the Subsistence Priority in Title VIII of ANILCA and that Uses on Non-Public Lands in Alaska May Be Restricted to Protect Subsistence Uses on Public Lands in Alaska." A Request for Comments on this Petition was published at 60 FR 6466 (1995). This proposed rule also responds to both petitions for rulemaking.

The Secretaries published an Advance Notice of Proposed Rulemaking (ANPR) (61 FR 15014) on April 4, 1996, and during May and June held ten public hearings around Alaska to solicit comments on the Advance Notice.

### Public Review and Comment

In addition to the oral testimony received at the public hearings, an additional 64 written comments including 1 petition representing 1,379 individuals and 1 letter submitted in behalf of 2 individuals, 6 Native organizations, and 4 local governments were received. The comments received both in writing and during the hearings in response to the Advance Notice provided the agencies with a sense of how the public viewed the general jurisdictional concepts outlined in the notice. A number of issues were raised by the public.

- The Federal government should not be interfering in any Alaska management. Previously, the Federal government managed fish and shellfish poorly. The State should manage fishing, hunting, and trapping throughout Alaska. The Secretaries agree that the State should be managing the fish and wildlife resources of Alaska and will work with the State to return management to it as soon as the State is in compliance with Title VIII of ANILCA.

- The State has failed to provide for subsistence uses; the Federal government should take over management of all navigable waters throughout Alaska. Federal jurisdiction should also be extended to include all marine waters. The 9th Circuit Court has ruled that Federal jurisdiction of subsistence fisheries management only includes those waters in which the Federal government has reserved water rights. When hunting, fishing, or trapping activities taking place in Alaska off of the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority, the Federal Subsistence Board may recommend that Secretaries take action to restrict or eliminate the interference.

- The identified waters are too extensive in scope. The waters identified in this rulemaking comply with the court's direction to identify those waters in which the Federal government has reserved water rights.

- Native allotments and water flowing through or past should be included. Native allotments are small, scattered, and remote, parcels whose boundaries are not readily identifiable on the ground. The existence of reserved water rights would have to be determined on a case-by-case basis. It is not practicable in the time available to identify any Federal reserved water rights which might be associated with individual allotments. Authority to make recommendations for inclusion of these lands, if appropriate, may be made by the Board under proposed § \_\_\_\_\_.10(d)(xviii).

- The Federal government should step in to regulate the Area M (False Pass intercept) fishery. At the present time the Federal government is preparing to assume jurisdiction over waters for which the Federal government has reserved water rights. Area M waters are not included in this jurisdiction. However, if there is interference with the subsistence priority for fishing on public lands as a result of activities in Area M, the proposed regulations clarify that the Secretaries have and will retain the authority to take action.

- ANILCA does not authorize the extension of Federal jurisdiction off of Federal lands. The Federal courts have long ruled that the Federal government may extend jurisdiction off of Federal lands in order to protect the interests and purposes of those Federal areas. This document clarifies that the Secretaries will retain that authority. The Board, located in Alaska and much more familiar with the unique situations there, will evaluate the situation and make recommendations to the Secretaries for their action.

- Congress did not intend for selected but not yet conveyed lands to be subject to Title VIII. Section 906(o)(2) provides that "the laws applicable to such unit" are to apply to the Federal lands within the unit until conveyed. Since selected lands are Federal lands, the only question is whether ANILCA's Title VIII governing subsistence uses is part of the body of laws "applicable to such unit." This question is easily answered in the affirmative. Each of the titles of ANILCA that establishes or expands a conservation system unit identifies the laws that apply to the unit. For example, new national parks established by ANILCA "shall be administered by the Secretary under the laws governing the

administration of such lands and under the provisions of this Act." In each case, the new units established by ANILCA are to be administered in accordance with ANILCA as well as other applicable organic legislation. The subsistence provisions in Title VIII are part of ANILCA and are therefore part of the body of law applicable to the new units under ANILCA section 906(o)(2). The statutes establishing the new units do not distinguish among the titles of ANILCA which are applicable; they simply say that along with the other statutes, ANILCA applies. Section 906(o)(2) applies this whole body of law to selected but not conveyed lands.

- The Federal Subsistence Board should not be granted authority to identify additional lands for designation as public lands. The authority to identify and include additional lands in the Federal Subsistence Management Program remains with the Secretaries. The change would clarify the Board's duty for identification and recommendation and specify that any inclusion of lands in the program would remain the authority of the Secretaries as provided under existing laws.

- The ANPR violates the Alaska Statehood and Submerged Lands Acts. Case law and subsequent legislation (e.g. Alaska Native Claims Settlement Act, ANILCA, etc.) have modified the Statehood and Submerged Lands Acts. This rulemaking, therefore, does not violate the Acts with their subsequent modifications and revisions.

- Some people commented that various procedural requirements have not been fulfilled, such as complying with NEPA, the Executive Order on Federalism, or preparing a Regulatory Flexibility Act analysis. The preparation of an environmental assessment and an economic analysis have been completed. The final rule will not be promulgated prior to the completion of all procedural requirements.

### Alternatives Considered in Preparing the Proposed Rule

The primary consideration in implementation of the Ninth Circuit Court directive is the identification of inland navigable waters considered Federal Public lands in Alaska (non-navigable waters are currently in the Federal program). The Court directed that the Federal Agencies responsible for administering the subsistence priority identify those waters, which are defined as waters in which the United States has a reserved water right. Accordingly, the responsible agencies identified alternatives based on different interpretations of the extent of jurisdiction associated with reserved

water rights. These alternatives are discussed in the Environmental Assessment which has been prepared for this Proposed Rule. The base case (Alternative I) is the no action alternative in which Federal jurisdiction does not change; it is used for purposes of analysis and is not consistent with the Court directive. Alternative II identifies a minimal definition of jurisdiction that includes only those inland navigable waters directly adjacent to Federal public lands. Alternative III is a broader definition than Alternative II and includes all inland navigable waters within the exterior boundaries of listed Parks, Preserves, Wildlife Refuges, and other specified units managed by the Department of the Interior and all inland navigable waters bordered by lands owned by the Federal government within the exterior boundaries of the two National Forests. With the exception of a few areas (National Petroleum Reserve-Alaska, national recreation areas and wild and scenic river corridors), navigable waters on lands managed by the Bureau of Land Management are not included in any of these alternatives. Alaska has a total of 196,234 miles of streams and rivers (data from the Digital Chart of the World); under Alternative II, 80,572 miles would be under Federal jurisdiction; and under Alternative III, 102,491 miles would be under Federal jurisdiction.

An alternative considered but not analyzed was the extension of Federal jurisdiction to all navigable waters in Alaska. This broad definition of jurisdiction was advocated by the plaintiff, Katie John, and adopted by the District Court. The court based this part of its decision on the Federal navigational servitude. The Ninth Circuit Court of Appeals reversed the district court's judgment on this point and remanded the decision. The directive of the Ninth Circuit was based on a determination that navigational servitude is not "public land" within the meaning of ANILCA because navigational servitude is not a sufficient Federal interest to define public land in the context of ANILCA. Instead, the appeals court relied upon the reserved water rights doctrine, which holds that when the United States withdraws lands from the public domain and reserves them for a Federal purpose, then the United States implicitly reserves the associated, unappropriated waters to the extent needed to accomplish the purposes of the withdrawal. The court held that these Federal reserved waters

are a sufficient interest to constitute public lands under ANILCA.

Alternative III was chosen as the preferred alternative for this Proposed Rule because it would fully implement the Ninth Circuit's ruling while avoiding the serious management difficulties that would arise from checkerboard jurisdiction over segments of rivers within Department of Interior Conservation System Units that is contemplated in Alternative II.

There are two issues that are common to all alternatives that were considered: dual management and customary trade. Two underlying premises are associated with dual management. The first is that the Federal and State programs will cooperate in the management of fisheries. The second premise is that a primary focus of the Federal program will be on the existing State Fishery Management plans, which identify parameters (harvest and escapement goals) used to make in-season decisions. A key aspect of the Federal-State cooperation will be the adoption of what are now the State Fishery Management plans into the Federal program. In general, this will involve the Regional Councils and Federal Subsistence Board in the evaluation of existing plans, modification if necessary to adequately address and accommodate subsistence uses, and development of new plans where necessary.

Although the Federal definition of Customary Trade was initially drawn from the State, the current Federal and State regulations differ in the definition and regulatory restrictions on Customary Trade. The differences are due to changes incorporated by the State to regulations addressing specific fisheries' issues. The proposed Federal regulations provide additional provisions to ensure separation of commercial markets and traditional customary trade practices. The same definition of Customary Trade would apply to all alternatives.

#### **Alternative I—No Action**

In the base case, or No Action Alternative, the Federal government would not extend jurisdiction to navigable waters. In this case, the fishery allocation and harvest decisions on all navigable waters would continue to be made by the State; the State would retain jurisdiction over all 196,234 miles of streams and rivers in the state that are not currently in the Federal Program (less than 1 percent of navigable waters are currently under Federal jurisdiction). Fishery decisions by the Federal Subsistence Board would be limited to non-navigable waters on Federal Public Lands and those limited

marine waters included in Conservation System Units. This alternative is counter to the Ninth Circuit's directive.

#### **Alternative II—Limited Federal Jurisdiction**

Alternative II is a restricted determination of jurisdiction. In this case, jurisdiction would only extend to waters directly adjacent to Federal Public lands; 80,572 miles of streams and rivers (41%) would be under Federal subsistence jurisdiction and 115,662 (59%) would remain under State jurisdiction. Only those navigable waters where at least one shoreline is Federal public land would be included. Lands and waters on selected but not yet conveyed parcels within DOI CSU's, national conservation and recreation areas, and new national forests or forest additions also would be included in Alternative II as well as Alternative III.

Land status becomes paramount for determining jurisdiction and the extent of jurisdiction could be dynamic as land ownership patterns change. With the current pattern of land ownership within the boundaries of CSUs managed by the Department of the Interior, Federal Subsistence fishery management would be fragmented due to the "checkerboard pattern" of "in-holdings" within most CSUs. Navigable waters within the boundaries of the majority of Bureau of Land Management lands are not included.

#### **Alternative III—Preferred Alternative**

Jurisdiction in Alternative III is broader than in Alternative II for lands managed by the Department of Interior but remains the same for lands managed by the Department of Agriculture (Forest Service lands). In Alternative III, all inland navigable waters within and adjacent to exterior boundaries of DOI Conservation System Units would be included under Federal jurisdiction. As in Alternative II, however, navigable waters on most BLM lands would not be included. Of the 196,234 miles of rivers and streams in the State, 102,491 (52%) would be under Federal subsistence jurisdiction and 93,743 (48%) would remain under State jurisdiction.

Land ownership patterns are the same as discussed in Alternative II, however, the extent of jurisdiction differs significantly. The difference is due to the inclusion of inland waters within the outer perimeter of DOI CSU's. The inclusion of these waters avoids the problems associated with the checkerboard pattern of land ownership within lands managed by the Department of the Interior. Jurisdiction on Forest Service lands remains the same as in Alternative II. The

regulations proposed in this document would implement this alternative.

### **Economic Impacts for All Alternatives**

For all three alternatives, economic impacts are expected to be insignificant. Such impacts would only occur due to shifts in harvest allocations between user categories (i.e. from commercial or sport allocations to subsistence allocations). The State's existing fisheries management program already accommodates most subsistence users. No major new groups of users would be added as a result of federal management. Significant shifts in allocations are not proposed or expected under any alternative.

For Alternative I (No Action) there would be no change in allocations and therefore no economic impacts.

For Alternative II, most subsistence fisheries that pose potential conflicts with sport or commercial fisheries would continue under State jurisdiction and management. The State of Alaska has exceptionally abundant fishery resources, and subsistence harvests of salmon are relatively low (about 1 percent of all salmon harvested statewide) compared to other uses. Therefore, any redirection of allocations to subsistence fisheries under Federal jurisdiction would likely be minimal, and would not result in significant reductions to commercial or sport fisheries. Moreover, subsistence uses would remain the highest priority even under State management, even though State law precludes a preference for rural residents. The practical difference between State and Federal management in this Alternative would be minimal. Therefore, Alternative II would not result in any significant economic impacts.

For Alternative III, Federal Subsistence jurisdiction would be more expansive. This expansion may lead to some increases in harvest allocations in subsistence fisheries under Federal jurisdiction. This in turn could possibly lead to some reallocation of harvests from commercial or sport fisheries in the future, though none are contemplated in the current proposed rule. The potential for impacts to commercial and sport fisheries are highest (1) where relatively large subsistence harvests are occurring, such as the Yukon, Kuskokwim, and Copper rivers; (2) in certain locations where a run or species of fish are prized for their subsistence use, such as sockeye salmon in several Southeast and Southcentral Alaska river systems or steelhead in the Situk River; or (3) in certain locations where subsistence uses are relatively common but access to fish is limited,

such as at or near some village sites in headwater and tributary stream systems in Alaska's interior. In general, however, any increases in subsistence allocations would have little, if any, effects on commercial or sport fisheries, because fishery resources are generally abundant and subsistence harvests are quite low (1% of salmon harvests statewide) compared to commercial and sport harvests.

Fisheries with the greatest potential for conflict include the Yukon, Kuskokwim, and Copper rivers. However, the Yukon and Kuskokwim rivers both have state-appointed advisory groups in place that provide recommendations for State management. These groups are made up of local users and have been effective in addressing and resolving drainage-wide issues. An important dynamic in balancing concerns between user groups in these drainages is that the subsistence users and commercial users are largely the same group of people (83% of the commercial permits on the Yukon River and 98 percent on the Kuskokwim are held by local rural residents). As an example, the current Yukon River Fall Chum Management Plan was developed through consultation with the Yukon River Drainage Fisheries Association. The YRDFA is made up of both commercial and subsistence users throughout the drainage. This existing plan maintains a subsistence priority at all escapement levels—commercial, sport, and personal use fisheries are opened by emergency order only at higher escapement levels, and the subsistence fishery is larger than the in-river commercial fishery. Effective local involvement would also be important to the Federal program, which would seek to incorporate input from organizations such as YRDFA. A second example, the Copper River Management Plan (5 AAC 01.249), already requires a large escapement that provides for all upriver uses including subsistence. Generally, subsistence needs are already being met through the subsistence and personal use fisheries (60% of the personal use permits were held by local, rural residents) in the Copper River. Therefore, no significant shifts in allocations and therefore no significant economic impacts are anticipated under Alternative III.

### **Federal Subsistence Regional Advisory Councils**

Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal

knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule.

### **Summary of Proposed Changes**

The following sections are proposed to have major revisions:

§ \_\_\_\_ .3(b)—Text is inserted to identify scope of the Federal Subsistence Management Program to include the waters in which the Federal government has reserved water rights.

§ \_\_\_\_ .4 "Federal lands"—The definition is revised to conform to the decision of the 9th Circuit Court of Appeals.

§ \_\_\_\_ .4 "Inland waters"—A new definition is inserted.

§ \_\_\_\_ .4 "Public lands or public lands"—The definition is revised to include the selected but not yet conveyed lands located within the boundaries of conservation system units, national recreation areas, national conservation areas, new additions to the national forests, and new national forests.

§ \_\_\_\_ .4 "Regulatory year"—A change in the regulatory year for fish and shellfish is needed in order to avoid having regulations change in the middle of a fishing season.

§ \_\_\_\_ .4 "Reserved water right(s)"—The definition is added to conform to the decision of the 9th Circuit Court of Appeals.

§ \_\_\_\_ .6—Language is inserted to clarify that the subsistence user must possess an Alaska *resident* hunting or trapping license. (No license is required for subsistence fishing.) The language in this section is also reorganized and simplified and some of the text is moved to § \_\_\_\_ .10(d).

§ \_\_\_\_ .10(a)—Language is added clarifying the Secretaries' existing authority to extend jurisdiction off of Federal lands to protect subsistence uses occurring on Federal lands.

§ \_\_\_\_ .10(d)(4)(xvii)—Language is added clarifying Board's authority to evaluate situations where there is a failure to provide the subsistence priority and make recommendations to the Secretaries for their action.

§ \_\_\_\_ .10(d)(4)(xviii)—Language is added clarifying Board's authority to identify additional lands where Federal interests exist and to recommend for

inclusion of those lands in the Federal Subsistence Management Program.

§ \_\_\_\_\_.10(d)(5)—Language is added to allow delegation of the authority to open or close established harvest seasons or harvest limits or open areas to field officials (i.e. Park Superintendents, Refuge Managers, etc.).

§ \_\_\_\_\_.24(a)(2)—The proposed language in this section is based on the last Alaska Department of Fish and Game customary and traditional use determinations that were in compliance with Title VIII (January 1990). Additionally, proposed changes have been added to address backlogged proposals relating to fish in the Kuskokwim and Bristol Bay Areas and Regional Council suggestions in the Southeastern Alaska Area. In these three areas, suggestions were made to include in the Customary and Traditional Use Determinations positive findings for the use of additional species by local residents.

§ \_\_\_\_\_.26 and .27—The proposed wording of these sections is based on the existing State subsistence regulations with some exceptions. The primary modifications are to:

- accommodate past Federal Subsistence Board actions (making rod and reel a legal method of subsistence harvest, allowing the 24-hour taking of salmon in Kodiak, and restricting the method and harvest of king crab in the Kodiak Area);
- provide for ongoing customary trade practices. In this case, the modification would recognize and legalize the common (and previously prohibited, though unenforced) practice of selling or trading small quantities of subsistence-taken fish by rural residents;
- eliminate specific references to State “non-subsistence areas” or other items clearly inconsistent with the Federal Program;
- replace references to the “Commissioner” with “Board”;
- remove Board of Fish management guidance to the Department of Fish and Game; and,
- specify a different fin to be removed from subsistence-taken salmon in Southeast to accommodate traditional fish drying practices in response to a request from the Southeast Regional Advisory Council.

For the purpose of clarity and ease of understanding, the entire text of the proposed rule for subparts A, B, and C, and sections \_\_\_\_\_.26, and \_\_\_\_\_.27 of subpart D is being printed. The unpublished section (Section \_\_\_\_\_.25) relates to wildlife regulations that are revised annually. Because this proposed rule relates to public lands managed by

an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR Part 242 and 50 CFR Part 100.

### **Conformance With Statutory and Regulatory Authorities**

#### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior’s Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

A preliminary environmental assessment has been prepared on the expansion of Federal jurisdiction and is available by contacting the office listed under “Addresses.”

### *Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

An evaluation of the effects of the Proposed Rule was conducted in accordance with section 810 and it does not appear that the Proposed Rule, if adopted as currently written, would significantly restrict subsistence users.

#### *Paperwork Reduction Act*

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements are a revision of the collection requirements already approved by OMB under Clearance Number 1018–0075. This revision is being submitted to OMB for approval. A comment period through April 20, 1998, is open on these collection requirements.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (one hour or less). This information is accessed via computer data base. The current overall annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing

instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the existing rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

The proposed collection of information will be achieved through the use of a Federal Subsistence Registration Permit Application, which would be the same form as currently approved and used for the hunting program. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish populations. The annual burden of reporting and recordkeeping is estimated to average 0.50 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 10,000, yielding a total annual reporting and recordkeeping burden of 5,000 hours or less.

As required by OMB regulations at 5 CFR 1320.8(d)(1), public comments are solicited as to:

- a. whether the collection of information is necessary for the proper performance of the function of the program, including whether the information will have practical utility;
- b. the accuracy of the estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- c. the quality, utility, and clarity of the information to be collected; and
- d. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Direct comments on the burden estimate or any other aspect of this collection to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

#### *Economic Effects*

This rule was classified as non-significant under Executive Order 12866 and was not submitted to OMB for review.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of \$3.00 per pound for salmon and \$0.58 per pound for other fish, would equate to about \$34 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Departments have determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

The Departments have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or state governments or private entities.

#### *Drafting Information*

These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

#### **List of Subjects**

##### **36 CFR Part 242**

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

##### **50 CFR Part 100**

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments propose to amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

#### **PART \_\_\_\_—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA**

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Revise subparts A, B, and C of 36 CFR part 242 and 50 CFR part 100 to read as follows:

##### **Subpart A—General Provisions**

Sec.

- \_\_\_\_.1 Purpose.
- \_\_\_\_.2 Authority.
- \_\_\_\_.3 Applicability and scope.
- \_\_\_\_.4 Definitions.
- \_\_\_\_.5 Eligibility for subsistence use.
- \_\_\_\_.6 Licenses, permits, harvest tickets, tags, and reports.
- \_\_\_\_.7 Restriction on use.
- \_\_\_\_.8 Penalties.
- \_\_\_\_.9 Information collection requirements.

##### **Subpart B—Program Structure**

- \_\_\_\_.10 Federal Subsistence Board.
- \_\_\_\_.11 Regional advisory councils.

- \_\_\_\_.12 Local advisory committees.
- \_\_\_\_.13 Board/agency relationships.
- \_\_\_\_.14 Relationship to State procedures and regulations.
- \_\_\_\_.15 Rural determination process.
- \_\_\_\_.16 Customary and traditional use determination process.
- \_\_\_\_.17 Determining priorities for subsistence uses among rural Alaska residents.
- \_\_\_\_.18 Regulation adoption process.
- \_\_\_\_.19 Closures and other special actions.
- \_\_\_\_.20 Request for reconsideration.
- \_\_\_\_.21 [Reserved].

#### Subpart C—Board Determinations

- \_\_\_\_.22 Subsistence resource regions.
- \_\_\_\_.23 Rural determinations.
- \_\_\_\_.24 Customary and traditional use determinations.

#### Subpart A—General Provisions

##### § \_\_\_\_\_.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

##### § \_\_\_\_\_.2 Authority.

The regulations in this part are issued pursuant to authority designated in this part, and specifically the authority vested in the Secretary of the Interior and Secretary of Agriculture specified in section 814 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3124.

##### § \_\_\_\_\_.3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency specific regulations.

(b) The regulations contained in this part apply:

(1) On all public lands including all non-navigable waters located on these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

- (i) Alaska Maritime National Wildlife Refuge;
- (ii) Alaska Peninsula National Wildlife Refuge;
- (iii) Aniakchak National Monument and Preserve;
- (iv) Arctic National Wildlife Refuge;
- (v) Becharof National Wildlife Refuge;

- (vi) Bering Land Bridge National Preserve;
- (vii) Cape Krusenstern National Monument;
- (viii) Denali National Preserve and the 1980 additions to Denali National Park;
- (ix) Gates of the Arctic National Park and Preserve;
- (x) Glacier Bay National Preserve;
- (xi) Innoko National Wildlife Refuge;
- (xii) Izembek National Wildlife Refuge;
- (xiii) Katmai National Preserve;
- (xiv) Kanuti National Wildlife Refuge;
- (xv) Kenai National Wildlife Refuge;
- (xvi) Kobuk Valley National Park;
- (xvii) Kodiak National Wildlife Refuge;
- (xviii) Koyukuk National Wildlife Refuge;
- (xix) Lake Clark National Park and Preserve;
- (xx) National Petroleum Reserve in Alaska;
- (xxi) Noatak National Preserve;
- (xxii) Nowitna National Wildlife Refuge;
- (xxiii) Selawik National Wildlife Refuge;
- (xxiv) Steese National Conservation Area;
- (xxv) Tetlin National Wildlife Refuge;
- (xxvi) Togiak National Wildlife Refuge;
- (xxvii) White Mountain National Recreation Area;
- (xxviii) Wrangell-St. Elias National Park and Preserve;
- (xxix) Yukon-Charley Rivers National Preserve;
- (xxx) Yukon Delta National Wildlife Refuge;
- (xxxi) Yukon Flats National Wildlife Refuge;
- (xxxii) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakle River.

(2) On all public lands including all inland waters, located on or bordered by other public lands, within or adjacent to the exterior boundaries of the following reservations:

- (i) Chugach National Forest;
- (ii) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

##### § \_\_\_\_\_.4 Definitions.

The following definitions apply to all regulations contained in this part:

*Agency* means a subunit of a cabinet level Department of the Federal government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

*ANILCA* means the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 94 Stat. 2371, (December 2, 1980) (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

*Barter* means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

*Board* means the Federal Subsistence Board as described in § \_\_\_\_\_.10.

*Commissions* means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

*Conservation of healthy populations of fish and wildlife* means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

*Customary and traditional use* means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

*Customary trade* means cash sale of fish and wildlife resources regulated herein, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

*FACA* means the Federal Advisory Committee Act, Pub.L. 92-463, 86 Stat.



770 (October 6, 1972) (codified as amended, at 5 U.S.C. Appendix II, 1–15).

*Family* means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

*Federal Advisory Committees or Federal Advisory Committee* means the Federal Local Advisory Committees as described in § \_\_\_\_\_.12

*Federal lands* means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

*Fish and wildlife* means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

*Game Management Unit or GMU* means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

*Inland Waters* means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

*Person* means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust or society.

*Public lands or public land* means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1) (i) through (iii) in this definition, until conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

*Regional Councils or Regional Council* means the Regional Advisory Councils as described in § \_\_\_\_\_.11.

*Regulatory year* means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

*Reserved water right(s)* means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

*Resident* means any person who has his or her primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose.

*Rural* means any community or area of Alaska determined by the Board to qualify as such under the process described in § \_\_\_\_\_.15.

*Secretary* means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

*State* means the State of Alaska.

*Subsistence uses* means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or

family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

*Take or taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Year* means calendar year unless another year is specified.

#### § \_\_\_\_\_.5 Eligibility for subsistence use.

(a) The taking of fish and wildlife on public lands for subsistence uses is restricted to Alaskans who are residents of rural areas or communities. Other individuals, including Alaskans who are residents of non-rural areas or communities listed in § \_\_\_\_\_.23, are prohibited from taking fish and wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § \_\_\_\_\_.24, only those Alaskans who are residents of rural areas or communities so designated are eligible for subsistence taking of that population or stock, on public lands for subsistence uses, under the regulations in this part. All other individuals are prohibited from taking fish or wildlife from that population under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g. "no determination"), all Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in this part.

(d) This section does not limit the authority of the National Park Service to regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR part 13.

#### § \_\_\_\_\_.6 Licenses, permits, harvest tickets, tags, and reports.

(a) To take fish and wildlife on public lands for subsistence uses, subsistence users must:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal



permits (Federal Subsistence Registration Permit or Federal Designated Hunter Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless superseded by the requirements in subpart D of this part.

(b) Individuals designated on a permit to take fish and wildlife must have that permit in their possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Licenses, permits, harvest tickets, tags or other documents required by this section must be produced by individuals upon the request of a State or Federal law enforcement agent. Persons engaged in taking fish and wildlife under these regulations must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in possession.

(c) The subsistence user must validate the harvest tickets, tags, permits, or other required documents before removing the kill from the harvest site. Persons engaged in taking fish and wildlife under these regulations must comply with all reporting provisions as set forth in subpart D of this part.

(d) When a community takes fish and wildlife under a community harvest system, the harvest activity must be reported in accordance with regulations specified for that community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of these regulations. Community harvests are reviewed annually under the regulations in subpart D of this part.

(e) To make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report is prohibited.

#### **§ \_\_\_\_\_.7 Restriction on use.**

(a) When fish and wildlife are taken pursuant to the regulations in this part, trade of the fish and wildlife, other than for customary trade or barter, is prohibited.

(b) When fish and wildlife are taken pursuant to the regulations in this part,

use or trade of the fish and wildlife which constitutes a significant commercial enterprise is prohibited.

#### **§ \_\_\_\_\_.8 Penalties.**

A person convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242 may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

#### **§ \_\_\_\_\_.9 Information collection requirements.**

(a) The rules in this part contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section \_\_\_\_\_.20, Request for reconsideration. The information collection requirements contained in § \_\_\_\_\_.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final determination by the Board. The Department of the Interior estimates that a request for reconsideration will take 4 hours to prepare and submit.

(2) Section \_\_\_\_\_.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § \_\_\_\_\_.6 (Federal Subsistence Registration Permit or Federal Designated Hunter Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine eligibility for a harvest and report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § \_\_\_\_\_.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(3) The remaining information collection requirements contained in this part imposed upon subsistence uses are those adopted from State regulations. These collection requirements would exist in the absence

of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible and information gained from these reports are systematically available to Federal managers by routine computer access requiring less than one hour.

(b) Direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

#### **Subpart B—Program Structure**

#### **§ \_\_\_\_\_.10 Federal Subsistence Board.**

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign them responsibility for, administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) Membership. (1) The voting membership of the Board shall consist of a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board shall consist of a State liaison, and the Chairpersons of each Regional Council. The State liaison and the Chairpersons of each

Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) Powers and duties. (1) Meetings shall occur at least twice per year and at such other times as deemed necessary by the Board. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans,

policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native corporations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Hunter Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest limits, define harvest areas, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee composed of a member from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service for analytical and administrative assistance. The U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) Relationship to Regional Councils. (1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

#### § \_\_\_\_\_.11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) Establishment of Regional Councils; membership. (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and recommend to the Secretaries that representatives on the Regional Councils be appointed from those nominated by subsistence users. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a one year term and may be reelected.

(c) Powers and Duties. (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under these regulations within the region;

(iv) Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to

accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission (Commission) within their region in accordance with the requirements of section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to § \_\_\_\_\_.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under these regulations, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

#### § \_\_\_\_\_.12 Local advisory committees.

(a) The Board shall establish such Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § \_\_\_\_\_.11.

(b) Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

#### § \_\_\_\_\_.13 Board/agency relationships.

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall promulgate regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subpart C and D

regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to promulgate regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

#### § \_\_\_\_\_.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by the regulations in this part.

(b) The Board may close public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife despite any State authorization for taking fish and wildlife on public lands. The Board may review and adopt State closures or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240.

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate

justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

**§ \_\_\_\_\_.15 Rural determination process.**

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2500 but not more than 7000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

- (i) Use of fish and wildlife;
- (ii) Development and diversity of the economy;
- (iii) Community infrastructure;
- (iv) Transportation; and
- (v) Educational institutions.

(6) Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a ten year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of five years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § \_\_\_\_\_.23.

**§ \_\_\_\_\_.16 Customary and traditional use determination process.**

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § \_\_\_\_\_.24.

**§ \_\_\_\_\_.17 Determining priorities for subsistence uses among rural Alaska residents.**

(a) Whenever it is necessary to restrict the subsistence taking of fish and

wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

**§ \_\_\_\_\_.18 Regulation adoption process.**

(a) Proposals for changes to the Federal subsistence regulations in subpart D of this part shall be accepted by the Board according to a published schedule, but at least once a year. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § \_\_\_\_\_.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and

means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart D of this part in the **Federal Register**.

(b) Proposals for changes to subpart C of this part shall be accepted by the Board according to a published schedule. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Public and governmental proposals shall be made available for a thirty (30) day review by the regional councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § \_\_\_\_\_.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart C of this part in the **Federal Register**. A Board decision to change a community's or area's status from rural to non-rural will not become effective until five years after the decision has been made.

(c) [Reserved]

(d) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.

#### § \_\_\_\_\_.19 Closures and other special actions.

(a) The Board may make or direct restriction or closure of the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) After consulting with the State of Alaska, providing adequate notice to the public, and holding at least one public hearing in the vicinity of the affected communities, the Board may make or direct temporary closures to subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. A temporary closure will not extend beyond the regulatory year in which it is promulgated.

(c) In an emergency situation, the Board may direct immediate closures related to subsistence or non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, or for public safety reasons. The Board shall publish notice and reasons justifying the emergency closure in the **Federal Register** and in newspapers of any area affected. The emergency closure shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and hearing, that such closure should be extended.

(d) The Board may make or direct a temporary change to open or adjust the seasons or to increase the bag limits for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons or bag limits. Prior to implementing a temporary change, the Board shall consult with the State, shall comply with the provisions of 5 U.S.C. 551-559 (Administrative Procedure Act or APA), and shall provide adequate notice and opportunity to comment. The length of any temporary change shall be confined to the minimum time period or bag limit determined by the Board to be necessary to satisfy subsistence uses. In addition, a temporary change may be made only after the Board determines

that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations. The decision of the Board shall be the final administrative action.

(e) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by these regulations, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(f) Taking fish and wildlife in violation of a restriction, or temporary change authorized by the Board is prohibited.

#### § \_\_\_\_\_.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the **Federal Register** are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, and mailing address;

(2) The action for which reconsideration is requested and the date of **Federal Register** publication of that action;

(3) A detailed statement of how the requestor is adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council for review and recommendation. The Board shall consider any Regional Council recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after

compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

§ \_\_\_\_\_.21 [Reserved]

**Subpart C—Board Determinations**

§ \_\_\_\_\_.22 **Subsistence resource regions.**

(a) The following areas are hereby designated as subsistence resource regions:

- (1) Southeast Region;
- (2) Southcentral Region;
- (3) Kodiak/Aleutians Region;
- (4) Bristol Bay Region;
- (5) Yukon-Kuskokwim Delta Region;
- (6) Western Interior Region;
- (7) Seward Peninsula Region;
- (8) Northwest Arctic Region;
- (9) Eastern Interior Region;
- (10) North Slope Region.

(b) Maps delineating the boundaries of subsistence resource regions are available from the U.S. Fish and

Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

§ \_\_\_\_\_.23 **Rural determinations.**

(a)(1) All communities and areas have been determined by the Board to be rural in accordance with § \_\_\_\_\_.15 except the following:

Adak;  
Fairbanks North Star Borough;  
Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;  
Juneau area—including Juneau, West Juneau and Douglas;  
Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;  
Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennekot Island;  
Municipality of Anchorage;  
Seward area—including Seward and Moose Pass; Valdez; and  
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenbergt Butte.

(2) Maps delineating the boundaries of non-rural areas listed in paragraph (a)(1) of this section are available from the U.S. Fish and Wildlife Service.

(b) [Reserved]

§ \_\_\_\_\_.24 **Customary and traditional use determinations.**

(a) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C) .....	Black Bear .....	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(A) .....	Brown Bear .....	Rural residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B) .....	Brown Bear .....	Rural residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C) .....	Brown Bear .....	Rural residents of Unit 1(C), Haines, Hoonah, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D) .....	Brown Bear .....	Residents of 1(D).
1(A) .....	Deer .....	Rural residents of 1(A) and 2.
1(B) .....	Deer .....	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C) .....	Deer .....	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(D) .....	Deer .....	No Federal subsistence priority.
1(B) .....	Goat .....	Rural residents of Units 1(B) and 3.
1(C) .....	Goat .....	Residents of Haines, Klukwan, and Hoonah.
1(B) .....	Moose .....	Rural residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay .....	Moose .....	No Federal subsistence priority.
1(D) .....	Moose .....	Residents of Unit 1(D).
Unit 2 .....	Brown Bear .....	No Federal subsistence priority.
2 .....	Deer .....	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3 .....	Deer .....	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands .....	Moose .....	Rural residents of Units 1(B), 2, and 3.
Unit 4 .....	Brown Bear .....	Residents of Unit 4 and Kake,
4 .....	Deer .....	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4 .....	Goat .....	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5 .....	Black Bear .....	Residents of Unit 5(A).
5 .....	Brown Bear .....	Residents of Yakutat.
5 .....	Deer .....	Residents of Yakutat.
5 .....	Moose .....	Residents of Unit 5(A).
Unit 6(A) .....	Black Bear .....	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, Remainder .....	Black Bear .....	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6 .....	Brown Bear .....	No Federal subsistence priority.
6(C) and (D) .....	Goat .....	Rural residents of Unit 6(C) and (D).
6 .....	Moose .....	No Federal subsistence priority.
6 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7 .....	Brown Bear .....	No Federal subsistence priority.
7 .....	Caribou .....	No Federal subsistence priority.
7, Brown Mountain hunt area .....	Goat .....	Residents of Port Graham and English Bay.

Area	Species	Determination
7, that portion draining into Kings Bay.	Moose .....	Residents of Chenega Bay and Tatitlek.
7, Remainder .....	Moose .....	No Federal subsistence priority.
7 .....	Sheep .....	No Federal subsistence priority.
Unit 8 .....	Brown Bear .....	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8 .....	Deer .....	Residents of Unit 8.
8 .....	Elk .....	Residents of Unit 8.
8 .....	Goat .....	No Federal subsistence priority.
Unit 9(D) .....	Bison .....	No Federal subsistence priority.
9(A) and (B) .....	Black Bear .....	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A), (C) and (D) .....	Brown Bear .....	No Federal subsistence priority.
9(B) .....	Brown Bear .....	Residents of Unit 9(B).
9(E) .....	Brown Bear .....	Residents of Chignik Lake, Egegik, Ivanof Bay, Perryville, and Port Heiden/Meshik.
9(A) and (B) .....	Caribou .....	Residents of Units 9(B), 9(C) and 17.
9(C) .....	Caribou .....	Residents of Units 9(B), 9(C), 17 and residents of Egegik.
9(D) .....	Caribou .....	Residents of Unit 9(D), and residents of False Pass.
9(E) .....	Caribou .....	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E) .....	Moose .....	Residents of Unit 9(A), (B), (C) and (E).
9(D) .....	Moose .....	No Federal subsistence priority.
9(B) .....	Sheep .....	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, Remainder .....	Sheep .....	No determination.
9 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E) .....	Beaver .....	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island .....	Caribou .....	Residents of False Pass.
10, Remainder .....	Caribou .....	No determination.
10 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11 .....	Bison .....	No Federal subsistence priority.
11 .....	Brown Bear .....	No Federal subsistence priority.
11, north of the Sanford River .....	Caribou .....	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder .....	Caribou .....	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11 .....	Goat .....	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River .....	Moose .....	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder .....	Moose .....	Residents of Unit 11 and Unit 13 (A)–(D) and the residents of Chickaloon.
11, north of the Sanford River .....	Sheep .....	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder .....	Sheep .....	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11 .....	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12 .....	Brown Bear .....	Residents of Unit 12 and Dot Lake.
12 .....	Caribou .....	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12, South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose .....	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13 (A)–(D) and the residents of Chickaloon and residents of Dot Lake.
12, East of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose .....	Residents of Unit 12.



Area	Species	Determination
12, Remainder .....	Moose .....	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12 .....	Sheep .....	Residents of Unit 12 and residents of Chistochina and Mentasta Lake.
12 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13 .....	Brown Bear .....	No Federal subsistence priority.
13 .....	Caribou Nelchina Herd .....	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(E) .....	Caribou .....	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D) .....	Goat .....	No Federal subsistence priority.
13(A), (B), and (D) .....	Moose .....	Residents of Unit 13 and the residents of Chickaloon.
13(C) .....	Moose .....	Residents of Units 12, 13 and the residents of Chickaloon and Dot Lake.
13(E) .....	Moose .....	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D) .....	Sheep .....	No Federal subsistence priority.
13 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13 .....	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C) .....	Brown Bear .....	No Federal subsistence priority.
14 .....	Goat .....	No Federal subsistence priority.
14 .....	Moose .....	No Federal subsistence priority.
14(A) and (C) .....	Sheep .....	No Federal subsistence priority.
Unit 15(C) .....	Black Bear .....	Residents of Port Graham and Nanwalek only.
15, Remainder .....	Black Bear .....	No Federal subsistence priority.
15 .....	Brown Bear .....	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat .....	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area .....	Goat .....	Residents Seldovia area.
15 .....	Moose .....	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15 .....	Sheep .....	No Federal subsistence priority.
15 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15 .....	Grouse (Spruce) .....	Residents of Unit 15.
15 .....	Grouse (Ruffed) .....	No Federal subsistence priority.
Unit 16 .....	Brown Bear .....	No Federal subsistence priority.
16(A) .....	Moose .....	No Federal subsistence priority.
16(B) .....	Moose .....	Residents of Unit 16(B).
16 .....	Sheep .....	No Federal subsistence priority.
16 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16 .....	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17 .....	Black Bear .....	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
17(A) .....	Brown Bear .....	Residents of Unit 17, and residents of Goodnews Bay and Platinum.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear .....	Residents of Kwethluk.
17(B) and (C) .....	Brown Bear .....	Residents of Unit 17.
17 .....	Caribou .....	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.

Area	Species	Determination
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake; to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou .....	Residents of Kwethluk.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose .....	Residents of Kwethluk.
17(A) .....	Moose .....	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17(B) and (C) .....	Moose .....	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17 .....	Beaver .....	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18 .....	Black Bear .....	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Chuathbaluk, Aniak, Lower Kalskag, Holy Cross, Stebbins, St. Michael, and Togiak.
18 .....	Brown Bear .....	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18 .....	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18, North of the Yukon River .....	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, Remainder .....	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage..	Moose .....	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder .....	Moose .....	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18 .....	Muskox .....	No Federal subsistence priority.
18 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C), (D) .....	Bison .....	No Federal subsistence priority.
19(A) .....	Brown Bear .....	Residents of Unit 19(A), (D), and Residents of Tuluksak, Lower Kalskag and Kwethluk.
19(B) .....	Brown Bear .....	Residents of Kwethluk.
19(C) .....	Brown Bear .....	No Federal subsistence priority.
19(D) .....	Brown Bear .....	Residents of Unit 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B) .....	Caribou .....	Residents of Unit 19(A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C) .....	Caribou .....	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D) .....	Caribou .....	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.
19(A) and (B) .....	Moose .....	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C) .....	Moose .....	Residents of Unit 19.
19(D) .....	Moose .....	Residents of Unit 19 and residents of Lake Minchumina.

Area	Species	Determination
19 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D) .....	Bison .....	No Federal subsistence priority.
20(F) .....	Black Bear .....	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E) .....	Brown Bear .....	Residents of Unit 12 and Dot Lake.
20(F) .....	Brown Bear .....	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou .....	No determination, except no subsistence for residents of households of the Denali National Park Headquarters.
20(D) and 20(E) .....	Caribou 40-Mile Herd .....	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A) .....	Moose .....	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B) .....	Moose .....	Minto Flats Management Area—residents of Minto and Nenana.
20(B) .....	Moose .....	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.
20(C) .....	Moose .....	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D) .....	Moose .....	Rural residents of Unit 20(D) and residents of Tanacross.
20(F) .....	Moose .....	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20(F) .....	Wolf .....	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D) .....	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D) .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21 .....	Brown Bear .....	Rural residents of Unit 21 and 23.
21 .....	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 23 and 24.
21(A) and (E) .....	Caribou .....	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(A) .....	Moose .....	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21(B) and (C) .....	Moose .....	Residents of Unit 21(B) and (C), residents of Tanana and Galena.
21(D) .....	Moose .....	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E) .....	Moose .....	Residents of Unit 21(E) and residents of Russian Mission.
21 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A) .....	Black Bear .....	Residents of Unit 22(A) and Koyuk.
22(B) .....	Black Bear .....	Residents of Unit 22(B).
22(C), (D), and (E) .....	Black Bear .....	No Federal subsistence priority.
22 .....	Brown Bear .....	Residents of Unit 22
22(A) .....	Caribou .....	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's Sheldon Point, and Alakanuk.
22, Remainder .....	Caribou .....	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22 .....	Moose .....	Residents of Unit 22.
22(B) .....	Muskox .....	Residents of Unit 22(B).
22(C) .....	Muskox .....	Residents of Unit 22(C).
22(D) .....	Muskox .....	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E) .....	Muskox .....	Resident of Unit 22(E) excluding Little Diomed Island.
22 .....	Wolf .....	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22 .....	Brouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 23 .....	Brown Bear .....	Rural residents of Units 21 and 23.
23 .....	Caribou .....	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23 .....	Moose .....	Residents of Unit 23.

Area	Species	Determination
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox .....	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, Remainder .....	Muskox .....	Residents of Unit 23 east and north of the Buckland River drainage.
23 .....	Sheep .....	Residents of Unit 23 north of the Arctic Circle.
23 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23 .....	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Resident of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management.	Black Bear .....	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder .....	Black Bear .....	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear .....	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder .....	Brown Bear .....	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area
24 .....	Caribou .....	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24 .....	Moose .....	Residents of Unit 24, and residents of Koyukuk and Galena.
24 .....	Sheep .....	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D) .....	Black Bear .....	Residents of Unit 25(D).
25(D) .....	Brown Bear .....	Residents of Unit 25(D).
25, remainder .....	Brown Bear .....	No Federal subsistence priority.
25(A) .....	Moose .....	Residents of Unit 25(A) and 25(D).
25(D) West .....	Moose .....	Residents of Beaver, Birch Creek and Stevens Village.
25(D), Remainder .....	Moose .....	Residents of Remainder of Unit 25.
25(A) .....	Sheep .....	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25 (B) and (C) .....	Sheep .....	No Federal subsistence priority.
25(D) .....	Wolf .....	Residents of Unit 25(D).
25, remainder .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26 .....	Brown Bear .....	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A) .....	Caribou .....	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B) .....	Caribou .....	Residents of Unit 26 and the residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C) .....	Caribou .....	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26 .....	Moose .....	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Point Hope and Anaktuvuk Pass.
26(A) .....	Muskox .....	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B) .....	Muskox .....	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C) .....	Muskox .....	Residents of Kaktovik.
26(A) .....	Sheep .....	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B) .....	Sheep .....	Residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C) .....	Sheep .....	Residents of Unit 26, Arcti Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

(2) Fish and shellfish determinations.

Area	Species	Determination
KOTZEBUE-NORTHERN AREA—Northern District.	All fish .....	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26–B.
Kotzebue District .....	Salmon, sheefish, char .....	Residents of the Kotzebue District.
NORTON SOUND-PORT CLARENCE AREA.	Salmon .....	Residents of the Norton Sound-Port Clarence Area.
YUKON AREA .....	Salmon .....	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River Fall chum salmon .....	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA .....	Salmon .....	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout .....	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod .....	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Cheforak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
Waters adjacent to the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island.	Herring and herring roe .....	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage.	Salmon and other freshwater fish	Residents of the Naknek and Kvichek River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52' North latitude) midstream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11'22" North latitude, 156°20'30" W longitude).	Salmon .....	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab .....	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict.	Dolly Varden .....	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuktoik Subdistrict.	Salmon .....	Residents of Port Graham and English Bay.
Tyonek Subdistrict .....	Salmon .....	Residents of the village of Tyonek.
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon .....	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon .....	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon .....	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.

Area	Species	Determination
SOUTH-EASTERN ALASKA AREA—District 1—Section 1—E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1—F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20' W. long. and east of 132°25' W. long.
District 3—Section 3—A .....	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section 3—B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3—C in waters of Sarkar Lakes.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9—A .....	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9—B north of the latitude of Swain Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island, north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island.
District 13—Section 13—A south of the latitude of Cape Edward.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Borough of Sitka in drainages which empty into Section 13—B north of the latitude of Dorothy Narrows.
District 13—Section 13—B north of the latitude of Redfish Cape.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13—B north of the latitude of Dorothy Narrows.
District 13—Section 13—C .....	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13—B north of the latitude of Dorothy Narrows.
District 13—Section 13—C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island.
District 14—Section 14—B and 14—C.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, but not elsewhere in Klukwan; and, those residents of other areas of the city and borough of Haines, excluding residents in the drainage of Excursion Inlet.

#### Subpart D—Subsistence Taking of Fish and Wildlife

3. In subpart D, revise §§ \_\_\_\_\_.26 and \_\_\_\_\_.27 of 36 CFR part 242 and 50 CFR part 100 to read as follows:

#### § \_\_\_\_\_.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) Fish may be taken for subsistence uses at any time by any method unless

restricted by the subsistence fishing regulations found in this section.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section and § \_\_\_\_\_.27:

*Abalone Iron* means a flat device which is used for taking abalone and

which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

**ADF&G** means the Alaska Department of Fish and Game.

**Anchor** means a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

**Beach seine** means a floating net which is designed to surround fish and is set from and hauled to the beach.

**Char** means the following species: Arctic char (*Salvelinus alpinus*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

**Crab** means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi*; all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

**Dip net** means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

**Diving Gear** means any type of hard hat or skin diving equipment, including SCUBA equipment.

**Drainage** means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

**Drift gill net** means a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

**Federal lands** means lands and waters and interests therein the title to which is in the United States.

**Fishwheel** means a fixed, rotating device for catching fish which is driven by river current or other means of power.

**Freshwater of streams and rivers** means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

**Fyke net** means a fixed, funneling (fyke) device used to entrap fish.

**Gear** means any type of fishing apparatus.

**Gill net** means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

**Grappling hook** means a hooked device with flukes or claws, which is attached to a line and operated by hand.

**Groundfish—bottomfish** means any marine fish except halibut, osmerids, herring and salmonids.

**Hand purse seine** means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

**Harvest Limit** means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

**Herring pound** means an enclosure used primarily to contain live herring over extended periods of time.

**Hung measure** means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

**Jigging gear** means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice.

**Lead** means either a length of net employed for guiding fish into a seine, set gill net, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

**Long line** means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

**Possession limit** means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

**Pot** means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

**Purse seine** means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

**Ring net** means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish

or shellfish across the top of the net is not prohibited when the net is employed.

**Rockfish** means all species of the genus *Sebastes*.

**Rod and reel** means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

**Salmon** means the following species: pink salmon (*Oncorhynchus gorbusha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

**Salmon stream** means any stream used by salmon for spawning or for travelling to a spawning area.

**Salmon stream terminus** means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

**Set gill net** means a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

**Shovel** means a hand-operated implement for digging clams or cockles.

**Spear** means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

**Take or Taking** means to pursue, hunt, shoot, trap, net capture, collect, kill, harm, or attempt to engage in any such conduct.

**To operate fishing gear** means any of the following: the deployment of gear in the waters of Alaska; the removal of gear from the waters of Alaska; the removal of fish or shellfish from the gear during an open season or period; or the possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

**Trawl** means a bag-shaped net towed through the water to capture fish or shellfish.

**Trout** means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) **Methods, means, and general restrictions.** (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit, the following are legal types of gear for subsistence fishing:

- (i) A set gillnet;
- (ii) A drift gillnet;
- (iii) A purse seine;
- (iv) A beach seine;
- (v) Troll gear;
- (vi) A fish wheel;



- (vii) A trawl;
- (viii) A pot;
- (ix) A ring net;
- (x) A longline;
- (xi) A fyke net;
- (xii) A lead;
- (xiii) A herring pound;
- (xiv) A dip net;
- (xv) Jigging gear;
- (xvi) A mechanical jigging machine;
- (xvii) A handline;
- (xviii) A rod and reel; and
- (xix) A spear.

(2) All pots used to take fish must contain an opening on the webbing of a sidewall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by regulations for particular areas set forth in this section. The gill net web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Any fishing gear used to take fish for subsistence uses may not obstruct more than one-half the width of any stream. A stationary fishing device may obstruct not more than one-half the width of any stream.

(5) The use of live non-indigenous fish as bait is prohibited.

(6) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(7) Kegs or buoys attached to any permitted gear may be any color but red.

(8) Each keg, buoy, stakes attached to gill nets, stakes identifying gear fished under the ice, and any other unattended fishing gear which a person employs to take fish for subsistence uses must have the first initial, last name, and address of the operator plainly and legibly inscribed.

(9) No person may use explosives or chemicals to take fish for subsistence uses.

(10) No person may take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and

family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Subsistence-taken fish, their parts, or their eggs may not be purchased for use in a significant commercial enterprise. Persons licensed by the State of Alaska to engage in a fisheries business may not receive for resale or barter or solicit to barter for subsistence-taken fish, their parts or their eggs.

(13) Except as provided elsewhere in this subpart, the taking of rainbow trout and steelhead trout is prohibited.

(14) Fish taken for subsistence use or under subsistence regulations may not be subsequently used as bait for commercial or sport fishing purposes.

(15) Harvest limits authorized in this section or § \_\_\_\_\_.27 may not be accumulated with harvest limits authorized in State seasons.

(16) Unless specified otherwise in this section, use of a rod and reel to take fish is permitted without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) Where a subsistence fishing permit issued by the ADF&G is required by this section, that permit is required to take fish for subsistence uses with rod and reel. The harvest and possessions limits for taking fish for subsistence uses with a rod and reel in those areas are the same as indicated on the ADF&G permit issued for subsistence fishing with other gear types;

(ii) Where a subsistence fishing permit is not required by this section, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(17) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, fish for subsistence uses may be taken at any time.

(18) Fish or their parts taken in violation of Federal law may not be possessed, transported, given, received or bartered.

(d) *Fishing by designated fishing permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take fish on his or her behalf. The designated fisherman must obtain a designated fishing permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) a person may not fish with more than one legal limit of gear as established by this section.

(5) A beneficiary may not designate more than one person to take or attempt to take fish on the beneficiary's behalf at one time. A beneficiary may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on behalf of a beneficiary.

(e) *Fishing permits and reports.* If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(1) The number of fish taken for subsistence use may not exceed the limits set in the permit;

(2) The permit must be obtained prior to fishing;

(3) The permit must be in the possession of the permittee and readily available for inspection while fishing or transporting subsistence-taken fish;

(4) If specified on the permit, the permittee shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(5) If the return of catch information necessary for management and conservation purposes is required by a fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) Federally-qualified subsistence users who commercial fish may retain fish for their subsistence purposes from their lawfully-taken commercial catch.

(2) No person, when participating in a commercial and subsistence fishery at the same time, may use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) No person may possess or transport subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) *Fishery management area restrictions.*—(1) *Kotzebue-Northern Area.* The Kotzebue-Northern Area includes all waters of Alaska north of the latitude of the westernmost tip of Cape Prince of Wales and west of 141° West longitude, including those waters draining into the Chukchi Sea and Arctic Oceans.

(i) Fish may be taken for subsistence purposes without a permit.

(ii) Salmon may be taken only by gill nets, beach seines, or a rod and reel.

(iii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(iv) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(v) In the Kotzebue District, the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and the Kelly River from its mouth to ¼ mile upstream are closed to subsistence char fishing from June 1 through September 20.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6:00 p.m. Thursday until 6:00 p.m. Tuesday.

(ii) In the Norton Sound District, fish may be taken at any time except as follows:

(A) In Subdistricts 2 through 6, commercial fishermen may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, salmon may be taken

only from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(iii) Salmon may be taken only by gill nets, beach seines, fishwheel, or a rod and reel.

(iv) In Subdistrict 1, only set gillnets may be used, except as otherwise specified.

(v) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gillnet in the aggregate and no person may operate an unanchored fishing net.

(vi) In the Norton Sound District, fish may not be taken for subsistence purposes seaward of the mouth of the Unalakleet River in an area between ADF&G regulatory markers on each side of the river to an outer line established by ADF&G regulatory markers and buoys.

(vii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(3) *Yukon Area.* The Yukon Area includes all waters of Alaska between the latitude of Canal Point light and the latitude of the westernmost point of Naskonat Peninsula, including those draining into the Bering Sea.

(i) Unless otherwise restricted in this section, salmon may be taken in the Yukon Area at any time.

(ii) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season:

(A) District 4, excluding the Koyukuk and Innoko River drainages;

(B) In Subdistricts 4-B and 4-C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 6, excluding the Kantishna River drainage.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In Subdistricts 6-A and 6-B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(v) In Districts 1, 2, 3, and Subdistrict 4-A, salmon may not be taken for subsistence purposes:

(A) During the 24 hours immediately before the opening of the commercial salmon fishing season; and

(B) 18 hours immediately before, during, and 12 hours after each weekly fishing period of the commercial salmon fishing season.

(vi) In the upper Yukon River drainage, Birch Creek, the Dall River from June 10–September 10, and within 500 feet of their mouths are closed to subsistence fishing, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit.

(vii) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River upstream from a point five miles downstream of the state highway crossing;

(B) Fish Creek upstream from the mouth of Bonanza Creek;

(C) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork; and

(D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(viii) Salmon may be taken only by gillnet, beach seine or fish wheel, subject to the restrictions set forth in this section.

(ix) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets larger than six-inch mesh after a date specified by ADF&G emergency order issued between July 10 and July 31.

(x) In Districts 4, 5, and 6, salmon may not be taken for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4-A upstream from the mouth of Stink Creek, king salmon may be taken by drift gillnets from June 21 through July 14, and chum salmon may be taken by drift gillnets after August 2;

(B) In Subdistrict 4-A downstream from the mouth of Stink Creek, king salmon may be taken by drift gillnets from June 15 through July 14; and

(C) No person may operate a drift gillnet that is more than 150 feet in length during the seasons described in paragraphs (h)(3)(x)(A) and (B) of this section.

(xi) Unless otherwise specified in this section, fish other than salmon may be taken subject to the following

restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes;

(B) The aggregate length of set gillnet in use by an individual may not exceed 150 fathoms and each drift gillnet in use by an individual may not exceed 50 fathoms in length; and

(C) In Districts 4, 5, and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear except that, at the site approximately one mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the "Slide," subsistence fishing gear may be set within 200 feet of other operating commercial or subsistence fishing gear.

(xii) In District 4, from September 21 through May 15, jigging gear may be used from shore ice.

(xiii) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(xiv) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from ADF&G regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.-Canada border;

(B) For whitefish and suckers in Birch Creek, Dall River from June 10–September 10, and within 500 feet of their mouths;

(C) For the taking of salmon in Subdistricts 6–A and 6–B.

(xv) Only one subsistence fishing permit will be issued to each household per year.

(xvi) Permits issued for the taking of salmon in Subdistricts 6–A and 6–B must also contain the following requirements:

(A) Salmon may be taken only by set gillnet or fish wheel. No household may operate more than one fish wheel;

(B) Each subsistence fisherman shall keep accurate daily records of his or her catch, the number of fish taken by species, location and date of the catch, and other information that the department may require for management or conservation purposes;

(C) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15;

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods will be identified by ADF&G;

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(xvii) In Districts 1, 2, and 3, no person may possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xviii) A commercial salmon permit holder registered for the setnet only locations may not use drift gillnets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xix) A commercial salmon fisherman who is registered for District 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, fish may be taken in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may not be taken for 16 hours before, during, and for six hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, salmon may not be taken for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, salmon may not be taken for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 salmon may not be taken for 16 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(vi) The Kanektok River is closed to the subsistence taking of fish by nets upstream of ADF&G regulatory markers

placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(vii) The Arolik River is closed to the subsistence taking of fish by nets upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(viii) Salmon may be taken only by gillnet, beach seine, or fish wheel subject to the restrictions set out in this section, except that salmon may also be taken by spear in the Holitna River drainage, Kanektok River drainage, and Arolik River drainage.

(ix) The aggregate length of set gillnets or drift gillnets in use by any individual for taking salmon may not exceed 50 fathoms.

(x) Each subsistence gillnet operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(xi) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, no part of a set gillnet located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gillnet.

(xii) The maximum depth of gillnets is as follows:

(A) Gillnets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than six-inch mesh may not be more than 35 meshes in depth.

(xiii) Subsistence set and drift gillnets operated in Whitefish Lake in the Ophir Creek drainage may not exceed 15 fathoms in length.

(xiv) A person may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. A person operating a subsistence set or drift gillnet shall check the net at least once every 24 hours.

(xv) Rainbow trout may be taken by residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak, subject to the following restrictions:

(A) Rainbow trout may be taken only by the use of gill nets, rod and reel, or jigging through the ice;

(B) The use of gill nets for taking rainbow trout is prohibited from March 15–June 15.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, fish, may be taken at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, subsistence fishing for salmon is permitted from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, salmon may be taken only during open commercial salmon fishing periods.

(iii) In the Egegik, and Ugashik Rivers from 9:00 a.m. June 23 through 9:00 a.m. July 17, salmon may be taken only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) Except for the western shore of the Newhalen River, waters within 300 feet of a stream mouth used by salmon are closed to the subsistence taking of fish.

(v) Within any district, salmon, herring, and capelin may be taken only by drift and set gillnets.

(vi) Gillnets are prohibited in that portion of the Naknek River upstream from Savonaski.

(vii) Outside the boundaries of any district, salmon may only be taken by set gillnet, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) Set gillnets may not exceed 10 fathoms in length in the Egegik and Ugashik Rivers, in the Nushagak District during the emergency order subsistence openings; in Naknek Lake;

(B) In the remaining waters of the area, set gillnets may not exceed 25 fathoms in length.

(ix) In the Nushagak District, during special subsistence openings, no set gillnet may be set or operated within 450 feet of another set gillnet.

(x) No part of a set gillnet may be operated within 300 feet of any part of another set gillnet.

(xi) Each set gillnet must be staked and buoyed.

(xii) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xiii) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(xiv) Only one subsistence fishing permit may be issued to each household per year.

(xv) After August 20, no person may possess coho salmon for subsistence

purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36' North latitude.

(i) Fish, other than salmon, rainbow trout, and steelhead trout, may be taken at any time unless restricted under the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries are lawfully taken and may be retained for subsistence purposes.

(ii) In the Unalaska District, salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, a salmon seine vessel may not be used to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, a purse seine vessel may be used to take salmon only with a gillnet and no other type of salmon gear may be on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Akutan and Umnak Districts, salmon may be taken at any time.

(iv) The waters of Unalaska Lake (at Unalaska Village), its drainages and the outlet stream and within 500 yards of its terminus are closed to subsistence fishing.

(v) The Adak District is closed to the taking of salmon.

(vi) Salmon may be taken by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vii) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) Salmon, trout and char may only be taken under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts.

(ix) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit except that in the Unalaska District, the holder of a subsistence salmon fishing permit may take no more than 25 salmon plus an additional 25 salmon for each member

of the same household whose name is listed on the permit.

(x) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned no later than October 31.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the latitude of the tip of Cape Menshikof.

(i) Fish, other than salmon, rainbow trout and steelhead trout, may be taken at any time unless restricted by the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries or through the ice, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(iii) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the department no later than October 31.

(iv) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth;

(C) Inshore of a line from the Pacific Pearl Dock to Black Point, including the inlet and Humboldt Creek.

(vi) Salmon may be taken by seine, gill net, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) No set gillnet may exceed 100 fathoms in length.

(ix) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(8) *Chignik Area*. The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 21' 13" West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) Fish, other than rainbow trout and steelhead trout, may be taken at any time, except as may be specified by a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may not be taken in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) Salmon may be taken by seines, gill nets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.

(iv) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(v) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(vi) Not more than 250 salmon may be taken for subsistence purpose unless otherwise specified on the subsistence fishing permit.

(vii) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned no later than October 31.

(viii) From 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30, a commercial fishing license holder may not subsistence fish for salmon.

(9) *Kodiak Area*. The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 52' N. lat.), west of 150° W. long., north of 55° 30' N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156° 20' 13" W. long.).

(i) Fish, other than salmon, rainbow trout and steelhead trout, may be taken at any time unless restricted by the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may be taken for subsistence purposes 24 hours a day

from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gillnets and no other type of salmon gear may be on board the vessel.

(iii) The following locations are closed to the subsistence taking of salmon:

(A) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(B) All waters closed to commercial salmon fishing in Anton Larsen Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(C) All waters 300 yards seaward of the terminus of Monks Creek;

(D) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(E) All freshwater systems of Afognak Island.

(iv) Salmon may only be taken by gill net, rod and reel, or seine.

(v) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(vi) A subsistence fishing permit is required for taking salmon, trout, and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(vii) A subsistence salmon fishing permit allows the holder to take 25 salmon plus an additional 25 salmon for each member of the same household whose names are listed on the permit. An additional permit may be obtained if it can be shown that more fish are needed.

(viii) All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence-caught fish, and must be returned by February 1 of the year following the year the permit was issued.

(10) *Cook Inlet Area*. The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from

Cape Douglas (58° 52' N. lat.) and a line extending south from Cape Fairfield (148° 40' W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken at any time in the Cook Inlet Area. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries and through the ice, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may be taken for subsistence purposes only as follows: no part of a set gillnet may be set or operated within 600 feet of any part of another set gill-net.

(iii) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(iv) Bottomfish may be taken by legal gear for commercial bottomfish fishing in the area.

(v) Herring may be taken only with gill nets. Gill nets used to take herring may not exceed 50 feet in length and 2 inches in mesh size.

(vi) Gill nets may not be used in fresh water.

(vii) Dolly Varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(viii) Salmon may be taken only under the authority of a subsistence fishing permit issued by ADF&G; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by ADF&G.

(ix) Whitefish may not be taken.

(x) Dolly Varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by ADF&G; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily Dolly Varden catches on forms provided by ADF&G.

(xi) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xii) The total annual possession limit for each subsistence salmon fishing permit is as follows:

(A) 25 salmon for the head of a household and 10 salmon for each dependent of the permit holder;

(B) In addition to the limits in paragraph (h)(10)(xii)(A) of this section, the holder of a Tyonek Subdistrict subsistence salmon fishing permit may take 70 king salmon.

(xiii) In the subsistence taking of smelt there are no harvest or possession limits and smelt may be taken only with dip nets or gill nets;

(A) In salt water from April 1 through May 31 and September 1 through October 30;

(B) In fresh water from April 1 through June 15;

(C) No gillnet fished in salt water may exceed 50 feet in length and two inches in mesh size;

(D) No gillnet fished in fresh water may exceed 20 feet in length and two inches in mesh size;

(E) Each gillnet must be attended by the fisherman at all times when it is being used to take fish.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken at any time in the Prince William Sound Area.

(ii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) The Chitina Subdistrict is closed to subsistence salmon fishing.

(iii) Rainbow trout and steelhead trout taken incidentally in other subsistence finfish net fisheries are lawfully taken and may be retained for subsistence purposes.

(iv) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(v) Salmon, other than chinook salmon, may be taken in the vicinity of the former Native village of Batzulnetas under the following conditions:

(A) Salmon may be taken only under the authority of a Batzulnetas subsistence salmon fishing permit;

(B) Salmon may be taken only in those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between ADF&G regulatory markers identifying the open waters of the creek;

(C) Fish wheels and dip nets only may be used on the Copper River; dip nets and spears only may be used in Tanada Creek;

(D) Salmon may be taken only from June 1 through September 1 or until the season is closed; openings will be established by the Board and will be two days per week during the month of

June and 3.5 days per week for the remainder of the season;

(E) Chinook salmon taken must be released to the water unharmed; fish wheels must be equipped with a livebox or be monitored at all times;

(F) Annual harvest and possession limits are as specified in this section;

(G) The permit must be returned no later than September 30 of each year.

(vi) Salmon may not be taken in any area closed to commercial salmon fishing unless specifically permitted in this section.

(vii) Fish may be taken by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(viii) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fish wheels, rod and reel, or dip nets;

(B) In salt water by gill nets and seines; and

(C) Fish wheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fish wheels must be removed from the water at the end of the permit period. Each permittee may operate only one fish wheel at any one time. No person may set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets.

(ix) A permit holder (permittee) must personally operate the fish wheel or dip net. A subsistence fish wheel or dip net permit may not be loaned or transferred.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xi) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(xii) Salmon and freshwater fish species may be taken only under authority of a subsistence fishing permit.

(xiii) Only one subsistence fishing permit will be issued to each household per year.

(xiv) A subsistence fishing permit for the Upper Copper River District will be issued only to residents of this state. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) Permits must be returned no later than October 31, or a permit for the following year may be denied;

(D) A household may not be issued both a Copper River salmon fishing permit and a Chitina Subdistrict salmon fishing permit.

(xv) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) No more than a total of 200 salmon for a permit issued to a household with one person, of which no more than five may be chinook salmon if taken by dip net;

(B) No more than a total of 500 salmon for a permit issued to a household with two or more persons, of which no more than five may be chinook salmon if taken by dip net.

(xvi) A person may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xvii) In locations open to commercial salmon fishing, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household; and

(D) No more than five king salmon may be taken per permit.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat Area.

(ii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(v) Any gillnet nor seine used for subsistence fishing may block up to two-thirds of a stream.

(vi) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(vii) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(viii) Subsistence fishermen must remove the dorsal fin from subsistence-caught salmon when taken.

(ix) No person may possess subsistence-taken and sport-taken salmon on the same day.

(13) *Southeastern Alaska Area*. The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken in the Southeastern Alaska Area at any time.

(ii) Coho salmon may only be taken from Salt Lake and Mitchell Bay from August 1 through October 31. Only one subsistence salmon fishing permit will be issued for a household for the Salt Lake and Mitchell Bay coho fishery.

(iii) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iv) In District 15, saltwaters of Lynn Canal including Chilkat and Chilkoot, are closed to the subsistence taking of salmon during closed periods of the commercial salmon net fishery in the district.

(v) Fish may be taken by gear listed in this part except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(A) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;

(B) Beach seines, rod and reel, and gaffs only may be used to take coho salmon;

(C) Set gill nets may be used in Yes Bay north of a line from Bluff Point to Syble Point, except within 500 yards of the terminus of Wolverine Creek; the subsistence permit holder shall be physically present at the gill net while it is in operation.

(vi) Salmon, trout, and char may only be taken under authority of a subsistence fishing permit.

(vii) Permits will not be issued for the taking of chinook or coho salmon, except for coho salmon as provided in this section, but chinook or coho salmon taken incidentally by gear operated

under terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report any chinook or coho salmon taken in this manner on his or her permit calendar.

(viii) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(ix) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(x) Subsistence fishermen shall immediately remove the pelvic fins of all salmon when taken.

(xi) No person may possess subsistence-taken and sport-taken salmon on the same day.

(xii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems of Petersburg, Wrangell, and Sitka.

(xiii) In the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

#### **§ \_\_\_\_\_.27 Subsistence taking of shellfish.**

(a) Regulations in this section apply to subsistence taking of dungeness crab, king crab, tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § \_\_\_\_\_.26 or this section.

(c) Methods, means, and general restrictions.

(1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that a person or designated group who has taken the harvest limit for a particular species under a subsistence season specified in this section may not after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section, gear as specified in the definitions of § \_\_\_\_\_.26 is legal for subsistence taking of shellfish.

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent ADF&G vessel license number. The keg or buoy may be any color except red.

(6) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(7) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(8) In addition to the marking requirements in paragraph (c)(5) of this section, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(9) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in paragraph (f) of this section.

(10) In the subsistence taking of shrimp in the Glacier Bay National Preserve, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Glacier Bay National Preserve, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Taking shellfish by designated fishing permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take shellfish on his or her behalf. The designated fisherman must obtain a designated shellfish permit prior to



attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) A person may not fish with more than one legal limit of gear as established by this section.

(5) A beneficiary may not designate more than one person to take or attempt to take shellfish on the beneficiary's behalf at one time. A beneficiary may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on behalf of a beneficiary.

(e) If a subsistence fishing permit is required by this chapter, the following conditions apply unless otherwise specified by the subsistence fishing regulations this section:

(1) The numbers of shellfish taken for subsistence use may not exceed the limits set out in the permit;

(2) Permits must be obtained prior to subsistence fishing;

(3) Permits must be retained in the possession of the permittee and be readily available for inspection while taking or transporting the species for which the permit is issued;

(4) If specified on the permit, each subsistence fisherman shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch and such other information may be required for management or conservation purposes;

(5) Subsistence fishing reports must be completed and submitted at a time specified for each particular area and fishery;

(6) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates to the department that failure to report was due to loss in the mail, accident, sickness or other unavoidable circumstances.

(f) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing

may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, commercial fishermen may retain shellfish for their own use from their lawfully taken commercial catch.

(g) No person may take or possess shellfish smaller than the minimum legal size limits.

(h) Unlawful possession of subsistence shellfish. Shellfish or their parts taken in violation of Federal or State regulations may not be possessed, transported, given, received or bartered.

(i) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* (i) Shellfish may be taken for subsistence purposes in the Glacier Bay National Preserve only under the authority of a subsistence shellfish fishing permit.

(ii) Sea cucumbers may not be taken with the use of diving gear.

(iii) In the subsistence taking of shrimp, no more than 10 pots per person, and no more than 20 pots per vessel may be used; in the subsistence taking of shellfish other than shrimp, no more than five pots of any type, per person, and no more than 10 pots of any type, per vessel, may be used.

(iv) No commercially licensed and registered shrimp fishing vessel may be used to take shrimp for subsistence purposes in Districts 6, 7, 8 and 10 from February 15 through April 30.

(v) In the subsistence taking of Dungeness crab:

(A) The daily harvest and possession limit is 20 crab per person except that, in waters of Thorne Bay west of the longitude of the southernmost tip of Thorne Head, the daily harvest and possession limit is five crab;

(B) Only male crab six and one-half inches or greater in shoulder width may be taken or possessed;

(C) Spears and gaffs may not be used in Districts 1 through 16;

(D) Live holding facilities utilized to accumulate or pool multiple harvest limits by an individual or individuals are not allowed.

(vi) In the subsistence taking of king crab:

(A) Red and blue king crab may not be taken from April 1 through June 30;

(B) Only male red and brown king crab seven inches and male blue king crab six and one-half inches or larger in width of shell may be taken or possessed;

(C) In the Yakutat Area the daily harvest and possession limit is two crab per person and only male crab may be taken;

(D) An operator of a commercially licensed and registered king crab fishing vessel shall obtain a permit before taking king crab for subsistence purposes in waters of Yakutat Bay enclosed by a line from the westernmost tip of Ocean Cape to the easternmost tip of Point Manby during the open commercial king crab fishing season.

(vii) The possession limit for Tanner crab is 30 crab per person per day.

(viii) The harvest limit is six geoducks per person per day.

(ix) In the subsistence taking of abalone:

(A) The possession limit is 50 abalone per person;

(B) The minimum legal size is three inches (76 mm) in greatest diameter of shell, except in District 13 the minimum legal size is three and one-half inches (89 mm) in greatest diameter of shell;

(C) Subsistence fishing is prohibited while engaged in commercial abalone fishing; prior to engaging in the subsistence fishery, commercial abalone fishermen must return the commercial permit to ADF&G and land the commercial catch in possession.

(x) In the subsistence taking of rock scallops (*Hinnites* sp) and weathervane scallops (*Pecten* sp), the daily harvest and possession limit is five rock scallops and 10 weathervane scallops.

(2) *Cook Inlet Area.* (i) Except as otherwise provided in this section, no person may take shellfish for subsistence purposes.

(ii) All waters within the boundaries of the Kenai National Wildlife Refuge are closed to the taking of shellfish for subsistence purposes.

(3) *Kodiak Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person; only male Dungeness crab with a shell width of six and one-half inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or

Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is three crabs per household; only male king crab seven inches or greater in width of shell may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than one crab pot no more than 75 cubic feet in capacity may be used to take king crab;

(D) King crab may be taken only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15–February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width

five and one-half inches or greater per person.

(4) *Alaska Peninsula-Aleutian Islands Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(iv) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person; only crabs with a shell width of six and one-half inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1–January 31.

(v) The daily harvest and possession limit is 12 male tanner crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(5) *Bering Sea Area.* (i) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a

subsistence shellfish fishing permit issued by the ADF&G.

(ii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male dungeness crab per person.

(v) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., crab may be taken only from June 1–January 31.

(vi) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male tanner crab.

Dated: December 1, 1997.

**Bruce Babbitt,**  
*Secretary of the Interior.*

Dated: December 4, 1997.

**Phil Janik,**  
*Regional Forester, USDA Forest Service.*  
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